IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-89

J. H. CHEATHAM, ET AL., *Petitioners*

v.

ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF RESPONDENT BROTHERHOOD IN OPPOSITION

QUESTION PRESENTED

The question presented for review as concerns the respondent union, Brotherhood of Railway Carmen of the United States and Canada (Brotherhood) is: Did the court below err in sustaining a grant of summary judgment on behalf of the Brotherhood entered by the District Court based upon a finding by that court that petitioners had failed to state a claim entitled to relief.

RESTATEMENT OF THE CASE

As in part indicated by petitioner's statement of the case, petitioners' complaint contended that the Brotherhood had breached a duty of fair representation due petitioners as their collective bargaining representative, and had conspired with the respondent railroad so as to deprive petitioners of dismissal (separation) allowances petitioners contend they were entitled to receive under a collective bargaining agreement entered into by the respondents dated September 25, 1964 (Ex. A, Exhibits to Appendix). Petitioners' presentation of their case before the lower courts evolved from an initial argument in support of their alleged rights under the 1964 agreement to a concentrated attack on conduct of the Brotherhood said to have deprived petitioners of such "rights".

By the expediency of conclusory allegations of conspiracy between respondents and the denial of fair representation by the Brotherhood, petitioners attempted to escape application of rules requiring prior resort to and exhaustion of administrative remedies, and sought to obtain judicial resolution of what the lower courts found was a "minor" dispute, a term descriptive of controversies arising under the Railway Labor Act involving the interpretation and application of provisions of collective bargaining agreements.

The District Court found that the record before it did not disclose that there was a genuine dispute as to any material fact, and accordingly granted the Brotherhood summary judgment. While not undertaking to determine the "merits" of the dispute, the District Court stated that material facts of record disclosed that the crux of petitioners' complaint was whether petitioners were entitled to "dismissal" allowances,

as that term is defined in the agreement, where it was shown that petitioners refused to exercise their seniority rights to *retain* employment with the respondent railroad.[1] That critical and initial question, the District Court held, was a question to be decided by the National Railroad Adjustment Board, or a similar tribunal established pursuant to Section 3, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second.

In affirming the judgment of the District Court, the court below held that the "first issue" presented by the complaint was a determination of the "rights" which the petitioners possessed under the 1964 agreement, a determination it agreed, was required to be obtained by petitioners through recourse to the procedures provided by the 1964 agreement or by the Railway Labor Act.

The court below found no support in the record for petitioners' contention that resort to an exhaustion of such an administrative remedy, [which was and continues to be available to petitioners], would be a "futile" undertaking by petitioners.

On rehearing, the court below shot down the last of petitioners' meritless contentions, and in distinguishing the decision of this court in *Conley* v. *Gibson*, 355 U.S. 41 (1957), found that the decision by the District Court that the complaint failed to state a claim entitled to relief was a proper ruling on the Brotherhood's motion for summary judgment.

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[1] As stated by petitioners (pet. pp. 4-5) "none of the petitioners were (sic) willing to leave their (sic) small town homes of 15 to 20 years to move to the urban areas where most of the proffered jobs were located. . . ."

ARGUMENT

Pursuing a not unfamiliar format for argument of their cause to this Court petitioners include in their contentions a restatement of a number of principles which have become "hornbook" law in resolution of disputes of this nature. The obstacle which petitioners continue to be unable to overcome is the justification for application of principles favorable to their position to the uncontested facts of record in this cause. Contentions urged for the fourth time by petitioners in an effort to open the courthouse door are fully answered by the rulings in the three decisions below.

The rulings of this Court in *Czosek,*[2] and *Conley,* supra, fail to afford support for petitioner's claims. Here the District Court had before it a motion by the Brotherhood supported by a memorandum of law and affidavits setting forth facts as to which there was no genuine dispute upon which the court could determine the substance of the allegations set forth in the complaint. *Broniman* v. *The Great Atlantic and Pacific Tea Co.,* 353 F.2d 559 (6th Cir. 1965). Exercising this authority the District Court concluded that the allegations of misconduct by the Brotherhood, and its alleged conspiracy with the respondent railroad, were not shown by the record to be material to the resolution of the basic question presented by petitioners' complaint—a question properly to be decided by the arbitration tribunal set forth in the agreement or under the Railway Labor Act. The court below found (A. p. 18) that the facts developed on the Motion for Summary Judgment demonstrated that the allegations of union wrongdoing and collusion were unsupported claims which did not remove this dispute from the

[2] Czosek v. O'Mara, 397 U.S. 25 (1970).

arbitration provision of the collective bargaining agreement.

It would be a work of super-erogation on the part of counsel to attempt to embellish the lucid reasonings of the courts below, or to add anything to them.

The petitioner does not disclose that there is conflict between the decision sought to be reviewed and those earlier issued by the Court; that there are important statutory issues or constitutional questions presented; that there is conflict between the decision below and those from other circuits; or any substantial reason why review of the decision below should be granted.

As the court has stated, *United States* v. *Johnston,* 268 U.S. 220, 227 (1925), certiorari is not granted to review evidence and discuss specific facts.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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August 13, 1975

Certificate of Service

I certify that service of this brief was made this day by the mailing, postage prepaid, of three (3) copies of this brief to counsel for each party of record.

WILLIAM J. HICKEY

August 13, 1975